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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,290	12/29/2000	Aaron Strand	8160.16016-CIP2 US	8901

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/751,290	STRAND ET AL.
	Examiner	Art Unit
	Robert Madsen	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-186 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-186 are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-28,41-62,75-115,168,169, and 173-175, drawn to a reclosable bag with a folded structure, two areas of weakness, and a reclosable structure that extends past the areas of weakness and into/over the fold classified in class 383, subclass 203. An election of species is required for this invention. See *Election of Species* in paragraph 9.
  - II. Claims 29,37-40,170,177 drawn to a reclosable bag with a folded structure, one area with a tear tape, and a reclosable structure that extends past the tear tape area and into the fold classified in class 383, subclass 203.
  - III. Claim 30-36, drawn to a reclosable bag with a folded structure, a reclosable structure, and barrier web class 383, subclass 42.
  - IV. Claim 63-68, drawn to a method of filling a bag with food wherein the bag is reclosable bag with a folded structure, two areas of weakness, and a reclosable track structure that extends past the areas of weakness and into the fold , classified in class 53, subclass 455.

- V. Claim 69-74, drawn to a method of filling a bag with food wherein the bag is a reclosable bag with a folded structure, one tear area , and a reclosable structure that extends past the tear area and into the fold, classified in class 53, subclass 455.
- VI. Claim 116 drawn to a reclosable bag with a folded structure, a tear tape, and a reclosable structure that extends past the tear tape area and over the fold classified in class 383, subclass 203.
- VII. Claims 117-137,145, drawn to a reclosable bag with a folded structure, a gusseted structure, two areas of weakness, and a reclosable structure that extends past the areas of weakness and into the fold classified in class 383, subclass 203.
- VIII. Claims 138-139, 147,drawn to a method of filling a bag with food wherein the bag is a reclosable bag with a folded structure, a gusseted structure, two areas of weakness, and a reclosable structure that extends past the areas of weakness and into the fold, classified in class 53, subclass 455.
- IX. Claims 140-144, drawn to a reclosable bag with a gusseted structure classified in class 383, subclass 78.

- X. Claim 146, drawn to a method of filling a bag with food wherein the bag is a reclosable bag with a gusseted structure classified in class 53, subclass 455.
- XI. Claims 148-167, 183-185, drawn to a bag of cheese classified in class 426, subclass 130.
- XII. Claim 171, drawn to a bag with means for filling and a barrier web, classified in class 383, subclass 113.
- XIII. Claim 172, drawn to a bag with one tear area, a fold structure, and a means for filling that extends past the tear area and into the fold, classified in class 383, subclass 200.
- XIV. Claim 176, drawn to a bag with two tear areas, a fold structure, and a means for filling that extends past the tear area and into the fold, classified in class 383, subclass 200.
- XV. Claim 178,179,182 drawn to a reclosable bag with a folded structure, a gusseted structure, two areas of weakness, a means for filling, and a reclosable structure that extends past the areas of weakness and into the fold classified in class 383, subclass 203.

XVII. Claims 180 and 181, drawn to a reclosable bag with a gusseted structure, a means for filling, classified in class 383, subclass 42.

XVIII. Claim 186, drawn to a bag with one tear area, a fold structure, and a means for filling that extends past the tear area and over the fold, classified in class 383, subclass 200.

2. The inventions are distinct, each from the other because:
3. Inventions I, II, III, VI, VII, IX, XII, XIII, XIV, XV, XVII, XVIII are all unrelated to one another. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). The differences in the various inventions include: gusseting (i.e. VII, IX, XV, XVII), means for facilitating opening (i.e. tear tape in II and VI, one tear area in XIII and XVIII, two tear areas in I, VII, XIV, and XV, or none at all in III, IX, XII, and XVII), location of the reclosable structure (i.e. expressly into the fold I, II, VII, XIII, XIV, XV, and XVI or expressly over the fold in I, VI and XVIII), and a means for filling without an opening structure (i.e. in XII, XIII, XIV, and XV wherein the means for filling could include a straw that is inserted into the bag and extends past the tear areas and into the fold or out and over the fold).
4. Inventions IV, V, VIII, and X are all unrelated to one another. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP §

806.04, MPEP § 808.01). These methods have different modes of operation. The differences include forming a gusset (i.e. VIII and X) and providing a means for facilitating opening (i.e., one tear area in V, two tear areas in IV and VII, or none at all in X).

5. Inventions IV, V, VIII, and X and Inventions I, II, III, VI, VII, IX, XI, XII, XIII, XIV, XV, XVII, and XVIII are respectively related as processes of making and products made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the products of I, II, III, VI, VII, IX, XII, XIII, XIV, XV, XVII, and XVIII (i.e. reclosable bag for food) can be made by another and materially different process, a method of filling a reclosable bag with pens. With respect to XI in particular (a bag containing cheese) that the product as claimed can be made by another and materially different process (i.e. the steps recited in IV, V, VIII, and X are not required to obtain the invention of XI). tear tape.

6. Inventions XI and Inventions I, II, III, VI, VII, IX, XII, XIII, XIV, XV, XVII, XVIII are related as combination and subcombinations. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the bag containing the cheese does not include

gusseting , with respect to VII, IX, XV, XVII. Furthermore, the cheese bag does not require a combination of a means for facilitating opening (i.e. tear tape in II and VI, one tear area in XIII and XVIII , two tear areas in I, VII,XIV, and XV , or none at all in III, IX, XII, and XVII) with any particular location of the reclosable structure (i.e. either expressly into the fold I, II, VII,XIII, XIV, XV, and XVI or expressly over the fold in I, VI and XVIII) and/or a means for filling without an opening structure . The subcombination has separate utility such as a bag for pens.

7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

8. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

***Election of Species***

9. Group I (Claims 1-28,41-62,75-115,168,169, and 173-175)contains claims directed to the following patentably distinct species of the claimed invention:

- a. The reclosable fastener extends beyond the areas of structural weakness and *into* the fold structure.
- b. The reclosable fastener extends beyond the areas of structural weakness and *over* the fold structure.

10. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 61,75, and 175 are generic.

11. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

12. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

13. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

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15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

16. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen  
Examiner  
Art Unit 1761  
March 21, 2003

*Steve Weinstein*  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER** 1761  
3/24/03  
for  
M. Cano